REMARKS/ARGUMENTS

The Final Office Action of February 1, 2011 has been carefully reviewed and these remarks are responsive thereto. By this paper, claims 1, 2, 5, 8, 9, 11, 18, 19, 21-23, 25 and 26 have been amended. Claim 20 has been canceled without prejudice or disclaimer. Claims 27-29 have been added. No new matter has been introduced. Upon entry of this paper, claims 1, 2, 5, 8, 9, 11, 18, 19 and 21-29 are pending in the Office Action. Reconsideration and allowance of the instant application are respectfully requested.

Rejections under 35 U.S.C. § 103(a)

In the Office Action, the claims were treated as follows:

- Claims 1-2 and 22-24 were rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over U.S. Patent Application Publication No. 2004/0153207 to Peck ("Peck") in further view of U.S. Patent No. 6,088,451 to He et al. ("He") in further view of U.S. Patent No. 6,201,536 to Hendricks et al. ("Hendricks").

- Claims 5 and 25 were rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Peck in view of He in further view of Hendricks in further view of U.S. Patent No. 6,275,496 B1 to Burns et al. ("Burns").

- Claims 8 and 9 were rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over U.S. Publication No. 2002/0069420 A1 to Russell et al. ("Russell") in view of Peck in further in view of He and in further view of Hendricks.

- Claim 11 was rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Russell in view of Peck in further view of He in further view of Hendricks in and in further view of Burns.

- Claim 18 was rejected as being allegedly unpatentable over Russell in view of He in further view of Hendricks.

- Claim 19 was rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Russell in view of He in further view of Hendricks and in further view of Burns.

- Claims 20 and 21 were rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Russell in view of He in further view of Hendricks and in further view of U.S. Publication No. 2005/0102297 A1 to Lloyd et al. ("Lloyd").
- Claim 26 was rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Russell in view of Peck in further view of He in further view of Hendricks in further view of U.S. Publication No. 2002/0188732 A1 to Buckman et al. ("Buckman").

Applicants respectfully traverse these rejections for at least the following reasons.

Independent claims 1 and 8

The Office Action, on page 4, appears to suggest that He describes approving transactions in response to determining that a communication failure exists. Specifically, the Office Action relies on He at col. 15, line 35 – col. 16, line 4, but is unclear as to what portions within that description is interpreted as approving transactions in response to determining a communication failure exists. The cited portion of He describes that unauthorized access and denial or service are two risks that occur when services fail to function correctly. He, col. 15, line 35-46. He further describes ways in which to avoid these risks. The first is to grant access when unable to communicate with the server that is responsible for enforcing the security policy. As explicitly stated in He, "[t]his is an undesirable policy and must never be employed." He, col. 15, ll. 40-41. The second is to always deny access if the security server cannot be reached, but He notes that this has the drawback of making the security server a bottleneck. He goes on to adopt this second approach, however, and discusses measures to help ensure that the communication with the security server will never fail. To achieve this, He suggests to physically secure the network security servers to prevent damage, and to design the network architecture with hardware and software replication to ensure standby servers will automatically operate if the main security servers fail. He, col. 15, ll. 57-67. Regarding the second approach of denying access and physically securing or designing in software/hardware redundancy to ensure a connection with the security server, this fails to teach or suggest "in response to determining that a communication failure exists between the component and the database at the time of the request, using, by a computing device of the component, the failsoft rules to perform

a transaction included in a process for providing the user device limited access to content requested by the request," as recited by amended claim 1. Instead, this second approach will deny access if the communication fails, and simply uses redundancy to help ensure that those communications will not fail. Regarding the first approach of *always* granting access when the security policy cannot be enforced, He explicitly states that this method should *never* be used. Accordingly, one or ordinary skill would not use this description of He in combination with other references. Any addition of Peck or Hendricks, either alone or in combination, fails to cure the above noted deficiencies of He.

Further, the Office Action relies on Hendricks for the "purchase cost limit" of claim 1 and specifically relies on Hendricks at col. 18, lines 54-62. That portion of Hendricks describes tuning "to a specific preview channel until the requested program is ready to be viewed." Hendricks, col. 18, ll. 55-59. Just past that portion, Hendricks describes allowing the preview channel to be viewed for a particular period of time. Hendricks, col. 18, line 63 – col. 19, line 6. It is unclear how tuning to a preview channel or allowing viewing of the preview channel for a particular time period teaches or suggests a "purchase cost limit," as recited by claim 1. Indeed, tuning to and viewing a preview channel does not appear to be related to a "purchase cost limit." If this rejection is maintained, Applicants request clarification as to what the purchase cost limit is in this citation. Any addition of Peck or He, either alone or in combination, fails to cure the above noted deficiencies of Hendricks.

In its rejection of claim 1, the Office Action relies on a combination of Peck, He and Hendricks. (Office Action, pages 3-5.) Specifically, the Office Action relies on Peck for the policy and the two sets of rules, while He and Hendricks are cited for other features. (*Id.*) Put simply, Peck does not teach or suggest "a user device request for content that identifies video or audio content and requests access to the video or audio content," as recited by claim 1. In Peck, portable computers are installed on carts that can be manually pushed throughout the storage facility, and can communicate wirelessly with controllers to receive messages, such as "pick" and "put" orders involving various inventory goods stored in the facility. *See, e.g.,* Peck, paragraphs [0036]-[0039]. Figure 2B of Peck provides an illustration of a cart with an installed portable computer (item 4).
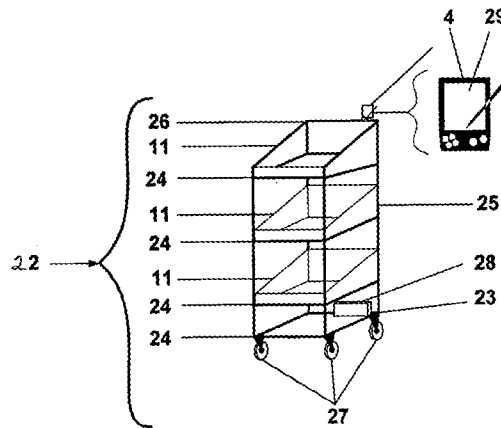
Fig 2B

Peck, Figure 2B. These "pick" and "put" orders of Peck, which are sent from a controller to a portable computer (e.g., item 4 of Fig. 2B, shown above), are not equivalent to "a user device request for content that identifies video or audio content and requests access to the video or audio content." Indeed, Peck is unrelated to user device requests that identify video or audio content and request access to the video or audio content.

Additionally, the combination of Peck, He and Hendricks is improper. One of ordinary skill in the art would not combine He and Hendricks with the Peck system, which includes a storage facility of inventory goods, manually pushed carts and portable computers installed on the carts. For example, Hendricks generally relates to a "network manager for use with a cable television system headend capable of monitoring and managing headend components and set top terminals in a television delivery system." *See, e.g.,* Hendricks, Abstract. One of ordinary skill in the art would not combine functions of a network manager for use in a cable television system headend (as in Hendricks) into a system for managing and controlling inventory goods in a storage facility (as described in Peck), because the systems are not analogous to each other. Indeed, the system of Peck is far afield from the system of Hendricks. The stark differences in subject matter can be clearly seen from a comparison between Figure 2B of Peck (seen above), which illustrates the manual cart that is pushed throughout the storage facility, and Figure 3A of Hendricks (seen below), which illustrates the headend for the cable television system.

Fig. 3a
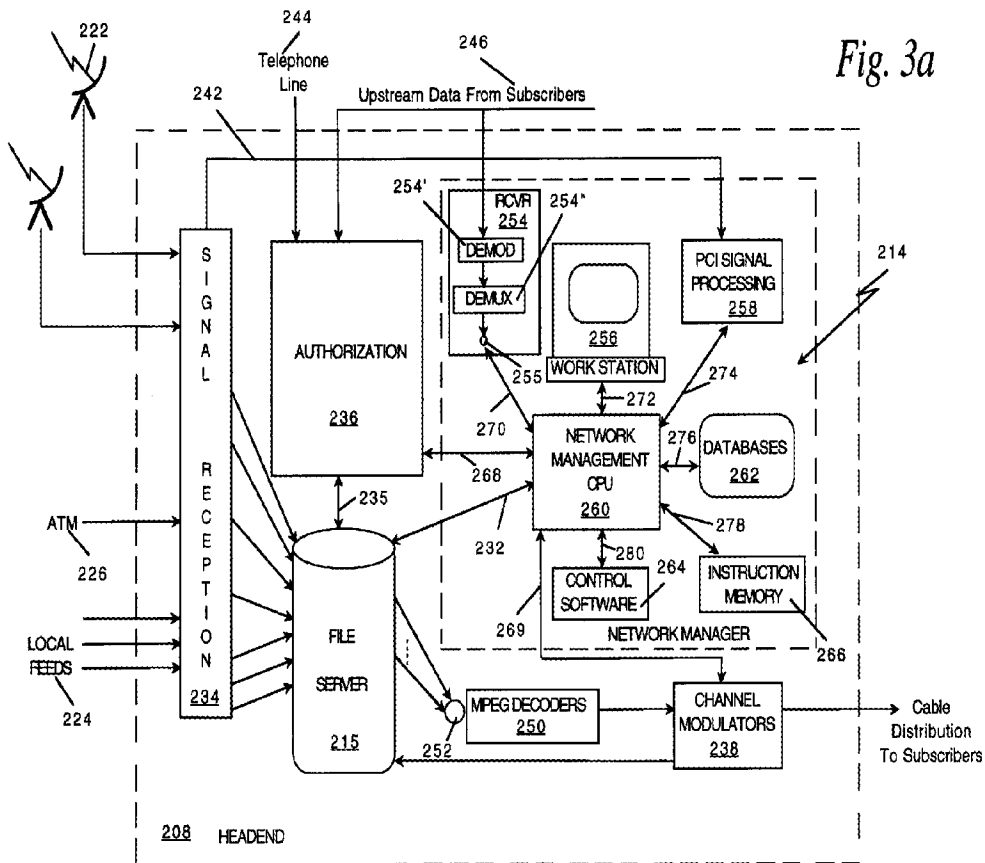
Hendricks, Figure 3A.

Accordingly, independent claim 1 distinguishes over the cited combination of documents and is in condition for allowance for at least the above reasons.

Independent claims 8, while different in scope, recites features similar to those discussed above with respect to claim 1, and is similarly allowable over Peck, He and Hendricks. Any addition of Russell, while cited for other features, fails to cure the above noted deficiencies of Peck, He and Hendricks.

Independent claim 18

Amended independent claim 18 recites, among other features, the following:

> determining whether approval of the request would exceed a predetermined cost limit established in a communication failure failsoft rule stored at the first computing device; and

upon determining that the communication failure exists and that approval of the request would exceed the predetermined cost limit, granting at least limited approval to the request and transmitting data responsive to the request to the user device.

In its rejection of claim 18, the Office Action, at page 14, states:

Russell in view of **He** fails to teach:

failure cost limit established in a communication failure content download failsoft;

Instead, the Office Action relies on Hendricks for the "cost limit established in a communication failure content download failsoft rule," and cited col. 18, lines 54-62 of Hendricks as support for its rejection. Hendricks describes allowing the preview channel to be viewed for a particular period of time. Hendricks, col. 18, line 63 – col. 19, line 6. It is unclear how tuning to a preview channel or allowing viewing of the preview channel for a particular time period teaches or suggests a "*cost limit* established in a communication failure failsoft," as recited by claim 1 (emphasis added). Indeed, tuning to and viewing a preview channel does not appear to be related to a "cost limit established in a communication failure failsoft rule." The Office Action admits that Russell and He fail to teach a cost limit (*see* Office Action, page 14).

Claim 18 also distinguishes over He for the same reasons as discussed with respect to claim 1. For example, similar to the discussion of He with respect to claim 1, He's approaches of physically securing or designing in software/hardware redundancy does not teach or suggest, "upon determining that approval of the request would exceed the predetermined purchase limit, granting at least limited approval to the request and transmitting data responsive to the request to the user device," as recited by claim 18. For example, the use of redundant servers upon a communication failure with a network server, as in He, does not teach or suggest granting of limited approval of a request. Regarding He's approach of *always* granting access when the security policy cannot be enforced, He explicitly states that this method should *never* be used. Accordingly, one or ordinary skill would not use this description of He in combination with other references. Any addition of Russell or Hendricks, either alone or in combination, fails to cure these deficiencies of He.

Accordingly, the combination of Russell, He and Hendricks fails to teach or suggest all features of independent claim 18. Thus, claim 18 patentably distinguishes over the cited combination of documents and is in condition for allowance.

Dependent claims 2, 5, 9, 11, 19 and 21-26

Claims 2, 5, 9, 11, 19 and 21-26 depend from one of independent claims 1, 8 or 18, and are allowable over the respective combination of Peck, He, Hendricks and Russell for at least the same reasons as their respective base claim. Any addition of Burns, Lloyd or Buckman fails to cure the respective deficiencies of Peck, He, Hendricks and Russell. Claims 2, 5, 9, 11, 19 and 21-26 are also allowable over the cited documents in view of the various novel and non-obvious features recited therein. For example, claim 9 recites "in response to resolution of the communication failure, transmitting an update from the component to the authorization computer informing the authorization computer of a transaction that occurred during the communication failure and that was performed as part of the approval or denial of the request for content." The Office Action at page 11 relies on Peck, paragraph [0064] for the features of claim 9. Peck, at paragraph [0064] describes ACK/NAK logic that causes transmission of "error messages by audio and visual means in the event of a failed transmission." Such ACK/NAK logic does not teach or suggest "in response to resolution of the communication failure, transmitting an update from the component to the authorization computer informing the authorization computer of a transaction that occurred during the communication failure and that was performed as part of the approval or denial of the request for content," as recited by claim 9.

New claims 27-29

New claims 27-29 have been added. Support for these claims can be found throughout the originally filed specification, claims and figures, and at least at paragraphs [0005], [0017], [0024]-[0030] and Figure 3 of the present application's printed publication (U.S. Patent Application Publication No. 2008/0313681 A1). While these claims have not yet been rejected, the following is in support of these claims. Claims 27-29 all depend from claim 1, and are allowable over the cited documents for at least the same reasons as claim 1 and further in view of the various novel and non-obvious features recited therein.

<u>CONCLUSION</u>

All rejections having been addressed, applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same.

Respectfully submitted,

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